

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4984 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No

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VEERUMAL GHELARAM BHATIA

Versus

COLLECTOR

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Appearance:

MR UNWALA FOR MR PK JANI for Petitioner - Veerumal Ghelaram Bhatia is also present in person.

MR. MUKESH PATEL, LD.AGP for Respondent Nos.1 & 2 -  
Mr.RM Patel, City Survey Superintendent, Vijapur,  
District Mehsana.

MR MB FAROOQUI for Respondent No. 3 -

MR.AB SATHWARA, Overseer of Municipal Borough is present.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 23/10/97

ORAL JUDGEMENT

The matter came up today for passing final orders

on the question of interim relief. However, on the request of both the sides the matter was finally heard. The petitioner herein has come with the case that he applied before the Vijapur Nagar Panchayat (now Municipal Borough) for giving him land bearing Survey Nos. 4/2/7, 4/2/8 and 4/2/8-1 on rent. Vijapur Nagar Panchayat granted permission to the petitioner in respect of the land measuring 16' X 11' in the year 1967. The petitioner's case is that he has been regularly paying the rent and lastly the rent has already been paid upto the financial year ending on 31.3.1998. Later on, the Nagar Panchayat also gave land measuring 25' x 25' to the petitioner on the back side of the front portion measuring 16' X 11' and for that back portion also the amount was charged from the petitioner by the Nagar Panchayat. For this back portion of 25' X 25' the Municipal Borough has lastly charged Rs.450/- for the year 1997-98 in terms of the resolution passed by the Municipal Borough.

It appears that a dispute arose between the Government and the Municipal Borough because according to the Collector, Mehsana, the land out of which the front portion of 16' X 11' was given to the petitioner was also a part of that land which was given to the Municipal Borough by the Government for the purpose of road and the Municipality instead of utilising this land for the purpose of road rented it out to the petitioner and others. There are in all 36 shops in this area for which the Municipality has charged the shopkeepers. The shopkeepers including the present petitioner had later on applied for back portion for storage purpose and the Municipality also granted permission. Mr. Farooqui appearing on behalf of the Vijapur Municipal Borough has stated that moment the Government objected to the permission accorded to these shop owners, the Municipality has deposited the entire amount which it had recovered from these shopkeepers in the Government Treasury and the Municipality has also made its stand clear that so far the back portion of these shops including one which has been rented out to the petitioner by the Municipality Borough, the Municipality Borough, Vijapur has no title whatsoever and it is the Government land. However, the petitioner's shop was sealed while the process of eviction on other shopkeepers was still in process and therefore the petitioner rushed to this Court and raised a grievance that he had atleast paid municipal rent for this back portion of 25' x 25' but other shopkeepers have not even paid any amount to the Municipality and in fact, they were land encroachers and yet the respondent first of all took action against the

petitioner and sealed his shop and stopped the running business while all other shopkeepers were on with their business in full swing. Since the respondent had not filed any return despite the service of the notice and despite repeated opportunities and even after the direction of this Court, the order was passed on 3.10.1997 calling upon the Vijapur Municipal Borough to make its stand clear before this Court and on that date i.e. 3.10.1997 an order was also passed that the petitioner shall be allowed to carry on his business on the two shops in question and in case the shops are sealed, the seal shall be removed by the district administration. It is only thereafter that the Vijapur Municipal Borough filed its affidavit in reply dated 28.10.1997. In this affidavit-in-reply, it has been made clear that the land in question bearing Survey No. 3252 is a Government land and therefore, the lease given by Vijapur Nagar Palika is cancelled. It has been also resolved by the Vijapur Nagar Palika that whatever rent has to be collected is to be deposited in the Government Treasury. That the Vijapur Nagar Palika allotted the open piece of land to the petitioner but no permission whatsoever has been granted for raising any construction and it is only now that it has come to the light that the land in question does not belong to Vijapur Municipality and that it had given by the government.

During the course of arguments, keeping in view the fact that the petitioner and other shopkeepers are running their business on these shops for number of years and looking to the factual position and the status of the land which is essentially a government land and even front side shops which have been given to the Municipality are on that portion of the land which is meant for the purpose of road, all the parties have taken a positive approach and have agreed as under :

- (1) That sofar as the petitioner's shop on the back side admeasuring 25' X 25' is concerned, it will be open for the respondents nos. 1 and 2 to remove him from these shops as and when the encroachments made by other shopkeepers are removed and the petitioners shall also vacate this portion measuring 25' X 25' as and when the other shopkeepers who have encroached the land vacate these premises or are evicted by respondent nos. 1 and 2 and the Municipal Borough will have no objection to the aforesaid course of action being taken by the respondent nos. 1 and 2.

(2) So far as the petitioner's shop on the front side i.e. measuring 16' X 11' is concerned, the petitioners continuance thereon shall be subject to the permission by the Municipal Borough after 31.3.1998 with the prior approval of respondents No.1 and 2. Till 31.3.1998 neither Municipality nor the respondent nos. 1 and 2 will interfere with the petitioner's business on this shop. After 31.3.1998 the Municipality would not grant permission either to the petitioner or to any other shopkeepers to continue the shops on the front side unless it seeks prior approval of the respondent nos.1 and 2.

(3). In case the petitioner has raised any construction on this piece of land on the back side i.e. portion of 25' X 25' it will not annure any benefit in favour of the petitioner and the land along with the construction raised thereon shall vest in the Government. However, it will be open for the Government to consider the request of the petitioner or other shopkeepers if at all the Government is prepared to allow them to continue their shops and business on this portion which is on the back side.

This Special Civil Application is therefore decided on the basis of the agreed terms as above and these terms which are agreed between the parties shall be enforceable as if it is an order of the Court. This Special Civil Application is therefore partly allowed as above and the rule is made absolute to the extent as indicated above. No order as to costs.

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m.m.bhatt